

Short Title: Partition of Property/Attorneys' Fees.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE IN PARTITION PROCEEDINGS THAT THE COURT SHALL  
ALLOCATE PRO RATA AMONG ALL THE COTENANTS THOSE REASONABLE  
ATTORNEYS' FEES INCURRED FOR THE COMMON BENEFIT OF ALL THE  
COTENANTS AND THAT REASONABLE ATTORNEYS' FEES INCURRED BY A  
COTENANT IN DISPUTING THE METHOD OF PARTITION SHALL BE ALLOCATED  
BY THE COURT AMONG COTENANTS THAT ARE ALIGNED WITH THE  
COTENANT ON THAT ISSUE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 1 of Chapter 46 of the General Statutes is amended by adding  
a new section to read:

**"§ 46-3.3. Attorneys' fees.**

(a) In proceedings to partition property under this Chapter, the court shall allocate among  
all the cotenants of the property those reasonable attorneys' fees incurred for the common benefit  
of all the cotenants, unless a cotenant shows by clear and convincing evidence that doing so  
would be inequitable. The allocation shall be according to each cotenant's interest in the property.

(b) The attorneys' fees described in subsection (a) of this section do not include attorneys'  
fees incurred in disputing which method of partition the court should order. Reasonable attorneys'  
fees incurred by a cotenant in disputing the method of partition shall be allocated by the court  
among those cotenants determined by the court to be aligned with the cotenant on that issue. The  
allocation shall be according to each aligned cotenant's interest in the property relative to the total  
interest of all the aligned cotenants in the property."

**SECTION 2.** G.S. 6-21 reads as rewritten:

**"§ 6-21. Costs allowed either party or apportioned in discretion of court.**

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

- (1) Application for years' support, for surviving spouse or children.
- (2) Caveats to wills and any action or proceeding ~~which~~that may require the construction of any will or trust agreement, or fix the rights and duties of parties ~~thereunder; provided, that in~~under any will or trust agreement. In any caveat proceeding under this subdivision, the court shall allow attorneys' fees for the attorneys of the caveators only if it finds that the proceeding has substantial merit.
- (3) Habeas ~~corpus; and the~~corpus. The court shall direct ~~what~~which officer shall tax the costs ~~thereof of the~~proceeding.
- (4) In actions for divorce or ~~alimony; and the~~alimony. The court may both before and after judgment make such order respecting the payment of such costs as may be incurred by either spouse from the sole and separate estate of either spouse, as may be just.
- (5) Application for the establishment, ~~alteration~~alteration, or discontinuance of a public road, ~~cartway~~cartway, or ferry. The board of county commissioners ~~may order the costs incurred before them paid in their discretion in its~~discretion may assess the costs incurred before the board.
- (6) The compensation of referees and commissioners to take depositions.
- (7) ~~All costs and expenses incurred in special proceedings for the division or sale of either real estate or personal property under the Chapter entitled Partition-partition of real or personal property under Chapter 46 of the General Statutes, except that attorneys' fees shall be assessed in accordance with G.S. 46-3.3.~~

(8) In all proceedings under ~~the Chapter entitled Drainage,~~ Chapter 156 of the General Statutes relating to drainage, except as ~~therein~~ otherwise ~~provided.~~ provided in that Chapter.

(9) In proceedings for reallocation of homestead for increase in value, as provided in the Chapter, Civil Procedure.

(10) In proceedings under Article 3 of Chapter 49 of the General Statutes regarding children born out of wedlock.

(11) In custody proceedings under Chapter 50A of the General Statutes.

(12) In actions brought for misappropriation of a trade secret under Article 24 of Chapter 66 of the General Statutes.

The word "costs" as ~~the same appears and is~~ used in this section ~~shall be construed to include~~ includes reasonable attorneys' fees in such amounts as the court shall in its discretion determine and ~~allow; provided that attorneys' allow.~~ Attorneys' fees in actions for alimony ~~alimony,~~ however, shall not be included in the costs as provided ~~herein,~~ in this section but shall be determined and provided for in accordance with G.S. 50-16.4."

*[Staff Note: Regarding G.S. 6-21(9), Session Laws 1981, c. 490, as amended by Session Laws 1981, c. 1001, repealed the homestead provisions in Chapter 1 of the General Statutes, including G.S. 1-373, which governed the procedure to reallocate a homestead due to an increase in value. The session law replaced the homestead laws with the exemption laws in Article 16 of Chapter 1C of the General Statutes but did not include a comparable successor provision to G.S. 1-373. Although G.S. 1C-1603(g) provides that an exemption may be modified due to a substantial change in value, this modification is by motion in the original exemption proceeding. Staff is consulting with the Bankruptcy Section of the North Carolina Bar Association and the North Carolina Advocates for Justice to determine if G.S. 6-21(9) should be repealed.]*

**SECTION 3.** G.S. 46-2.1 reads as rewritten:

**"§ 46-2.1. ~~Summons.~~Summons; notice included in petition.**

(a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.

(b) Written notice shall be included in the petition in a manner reasonably calculated to make the respondent aware of the following:

(1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.

(2) That pursuant to ~~G.S. 6-21~~ G.S. 46-3.3, the court has the ~~authority, in its discretion, authority to order reasonable attorneys' fees to be paid as a part of the costs of the proceeding.~~"

**SECTION 4.** G.S. 46-27 reads as rewritten:

**"§ 46-27. Sale of land-real property required for public use on cotenant's petition.**

When the ~~lands-real property~~ of ~~joint tenants or~~ tenants in common ~~or joint tenants are~~ is required for public purposes, one or more ~~of such tenants, or their guardian for them, cotenants, or the cotenant's guardian,~~ may file a petition verified by ~~oath, oath~~ in the superior court of the county where the ~~lands or any part of them lie, property or any part of the property is located,~~ setting forth ~~therein in the petition~~ that the ~~lands are~~ property is required for public purposes, and that ~~their the cotenants'~~ interests would be promoted by a sale ~~thereof. of the property.~~ Whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of ~~such lands, the property, or so much thereof of the property as~~ may be necessary. ~~The expenses, fees and costs of this proceeding shall be paid in the discretion of the court. Attorneys' fees shall be assessed in accordance with G.S. 46-3.3. Mediator fees and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B. Other costs and expenses shall be assessed in accordance with G.S. 6-21.~~"

**SECTION 5.** This act becomes effective [October 1, 2019], and applies to partition proceedings commenced on or after that date.